

**AN ORDINANCE ESTABLISHING THE SMOKE-FREE
AIR ENVIRONMENT AND TO REGULATE SMOKING IN
CERTAIN AREAS IN THE CITY OF PRICHARD, ALABAMA**

WHEREAS, the governing body of the City of Prichard finds and determines that numerous studies have found that tobacco smoke is a major contributor to indoor pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually. (National Cancer Institute (NCI), "*Health effects of exposure to environmental tobacco smoke: the report of the California Environmental Protection Agency. Smoking and Tobacco Control Monograph 10*," Bethesda, MD: National Institutes of Health, National Cancer Institute (NCI), August 1999.);

WHEREAS, the governing body of the City of Prichard finds and determines that the Public Health Service's National Toxicology Program (NTP) has listed secondhand smoke as a known carcinogen. (Environmental Health Information Service (EHIS), "*Environmental tobacco smoke: first listed in the Ninth Report on Carcinogens*," U.S. Department of Health and Human Services (DHHS), Public Health Service, NTP, 2000; reaffirmed by the NTP in subsequent reports on carcinogens, 2003, 2005.);

WHEREAS, the governing body of the City of Prichard finds and determines that based on a finding by the California Environmental Protection Agency in 2005, the California Air Resources Board has determined that secondhand smoke is a toxic air contaminant, finding that exposure to secondhand smoke has serious health effects, including low birth-weight babies; sudden infant death syndrome (SIDS); increased respiratory cancer in younger, premenopausal women heart disease; and death. (Appendix II Findings of the Scientific Review Panel: Findings of the Scientific Review Panel on Proposed Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant as adopted at the Panel's June 24, 2005 Meeting, California Air Resources Board (ARB), September 12, 2005);

WHEREAS, the governing body of the City of Prichard finds and determines that there is no safe level of exposure to secondhand smoke, (Environmental Protection Agency (EPA), "*Respiratory health effects of passive smoking: lung cancer and other disorders, the report of the U.S. Environmental Protection Agency. Smoking and Tobacco Control Monograph 4*," Bethesda, MD; National Institutes of Health, National Cancer Institute (NCI); Environmental Protection Agency (EPA), August 1993; California Environmental Protection Agency, "*Health Effects of Exposure to Environmental Tobacco Smoke*," 1997; California Air Resources Board, "*Proposed identification of environmental tobacco smoke as a toxic air contaminant*," Sacramento: California Environmental Protection Agency (Cal-EPA), Air Resources Board Stationary Source Division, Air Quality Measure Branch, Office of Environmental Health Hazard Assessment (OEHHA), September 29, 2005.);

WHEREAS, the governing body of the City of Prichard finds and determines that a study of hospital admissions for acute myocardial infarction in Helena, Montana before, during, and after a local law eliminating smoking in workplaces and public places was in effect, has determined that laws to enforce smoke-free workplaces and public places may be associated with a reduction in morbidity from heart disease. (Sargent, Richard P.; Shepard, Robert M.; Glantz Stanton A., "*Reduced incidence of admissions for myocardial infarction associated with public smoking ban: before and after study*," British Medical Journal 328: 977-980, April 24, 2004);

WHEREAS, the governing body of the City of Prichard finds and determines that secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer. (California Environmental Protection Agency (Cal EPA), "*Health effects of exposure to environmental tobacco smoke*", Tobacco Control 6(4): 346-353, Winter, 1997.);

WHEREAS, the governing body of the City of Prichard finds and determines that The U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke. (Department of Health and Human Services, *The Health Consequences of Involuntary Smoking: A Report of the Surgeon General*. Public Health Service, Centers for Disease Control, 1986 and 2006.) The Environmental Protection Agency has determined that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation. Air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke. (Environmental Protection Agency (EPA), "*Indoor air facts no. 5: environmental tobacco smoke*," Washington D.C.: Environmental Protection Agency (EPA), June 1989);

WHEREAS, the governing body of the City of Prichard finds and determines that The U.S. Centers for Disease Control and Prevention has determined that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is non-linear at low doses, increasing rapidly with relatively small doses such as those received from secondhand smoke or actively smoking one or two cigarettes a day, and has warned that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking. (Pechacek, Terry F.; Babb, Stephen, "*Commentary: How acute and reversible are the cardiovascular risks of secondhand smoke?*" British Medical Journal 328: 980-983, April 24, 2004);

WHEREAS, the governing body of the City of Prichard finds and determines that Given the fact that there is no safe level of exposure to secondhand smoke, the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) bases its ventilation standards on totally smoke-free environments. ASHRE determined that there is currently no air filtration or other ventilation technology that can completely eliminate all the carcinogenic components in secondhand smoke and the health risks caused in their entirety. (Samet, J.; Bohanon, Jr., H.R.; Coltass, D.B.; Houston, T.P.; Persily, A.K.; Schoen. L.J.; Spengler, J.; Callaway, C.A., "*ASHRAE position document on*

environmental tobacco smoke," American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), 2005.);

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WHEREAS, the governing body of the City of Prichard finds and determines that a significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function. (Pitsvaos, C.; Panagiotakos, D. B.; Chrysohoou, C.; Skomas, J.; Tzioumis, K.; Stefanadis, C.; Panagiotakos. "*Association between exposure to environmental tobacco smoke and the development of acute coronary syndromes: the CARDIO2000 case-control study*," Tobacco Control 11(3) 220-225, September 2002.);

WHEREAS, the governing body of the City of Prichard finds and determines that the Society of Actuaries has determined that secondhand smoke costs the U.S. Economy roughly \$10 billion a year; \$5 billion in estimated medical costs associated with secondhand smoke exposure, and \$4.6 billion in lost productivity. (Behan, D.F.; Briksen, M.P.; Lin, Y., "*Economic Effects of Environmental Tobacco Smoke*," Society of Actuaries, March 31, 2005.);

WHEREAS, the governing body of the City of Prichard finds and determines that numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke-free. Creation of smokefree workplaces is sound economic policy and provides the maximum level of employee health and safety. (Glantz, S.A. & Smith, L. *The effect of ordinances requiring smoke-free restaurants on restaurant sales in the United States*. American Journal of Public Health, 87:1687-1693, 1997; Colman, R.; Urbonas, C.M., "*The economic impact of smoke-free workplaces: an assessment for Nova Scotia, prepared for Tobacco Control Unit, Nova Scotia Department of Health*," GPI Atlantic, September 2001.);

WHEREAS, the governing body of the City of Prichard finds and determines that hundreds of Communities in the U.S., plus numerous states, including California, Delaware, Florida, Massachusetts, Montana, New Jersey, New York, and Washington, have enacted laws requiring workplaces, restaurants, bars, and other public places to be smoke-free, as have numerous countries, including Ireland, New Zealand, Norway, Scotland, Sweden, Uganda, and Uruguay;

WHEREAS, the governing body of the City of Prichard finds and determines that there is no legal or constitutional “right to smoke.” Business owners have no legal or constitutional right to expose their employees and customers to the toxic chemicals in secondhand smoke. On the contrary, employers have a common law duty to provide their workers with a workplace that is not unreasonably dangerous;

WHEREAS, the governing body of the City of Prichard finds and determines that smoking is a potential cause of fires; cigarette and cigar burns and ash stains on merchandise and fixtures causes economic damage to businesses. (*“The high price of cigarette smoking,”* Business & Health 15(8), Supplement A: 6-9, August 1997.);

WHEREAS, the governing body of the City of Prichard finds and determines that the smoking of tobacco is a form of air pollution, a positive danger to health, and a material public nuisance; and

WHEREAS, the governing body of the City of Prichard finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and (2) to guarantee the right of nonsmokers to breathe smoke-free air, and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke;

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PRICHARD, ALABAMA, as follows:

Section 1. This Ordinance shall be known as the City of Prichard Smoke-free Air Ordinance of 2007.

Section 2. **Definitions.** The following words and phrases, whenever used in this Ordinance, shall be construed as defined in this Section:

1. “Bar” means a stand-alone establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and where food sales represent twenty-five (25) percent or less of the bar’s gross annual receipts. Bars include but are not limited to, taverns, nightclubs, cocktail lounges, and cabarets. A “bar” must be posted off limits to minors and must not allow any minors inside.
2. “Business” means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.
3. “Employee” means a person who is hired by another to perform a task or job in consideration for direct or indirect monetary wages, gain or profit, and a person who volunteers his or her services for a non-profit entity. This term includes independent contractors.

4. “Employer” means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that hires the services of one or more individual persons.
5. “Enclosed Area” means that area between a floor and ceiling that is enclosed, or is capable of being enclosed, on all sides by solid walls, or windows, (exclusive of doorways), which extend from floor to the ceiling.
6. “Place of Employment” means an area under the control of a public or private Employer that Employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a “Place of Employment” unless it is also used as a business such as child care, adult day care, or health care facility.
7. “Private Club” means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501. A “private club” is not open to the general public. However, a private club established for the purpose of avoiding the prohibitions on smoking called for in this Article shall be deemed a Public Place.
8. “Public Place” means an enclosed area to which the general public is invited or in which the general public is permitted, including but not limited to, banks, educational facilities, health care facilities, hotel and motel lobbies, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arena, theaters, and waiting rooms. A “private club” is a “public place” when being used for a function to which the general public is invited or allowed to attend. A private residence is not a “public place” unless it is used as a business location, child care, adult day care, or health care facility.
9. “Restaurant” means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich shops, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term “restaurant” shall include a bar area within the restaurant.

10. "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
11. "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form.
12. "Sports Arena" means sports pavilions, stadiums, ball fields, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

Section 3. Application of Article to Prichard-Owned Facilities. All enclosed areas, including buildings and vehicles, which are owned, leased, or operated by the City of Prichard shall be subject to the provisions of this Ordinance.

Section 4. Prohibition of Smoking in Enclosed Public Places. Smoking shall be prohibited in all enclosed Public Places, within the City of Prichard, including but not limited to the following places

1. Galleries, libraries, museums.
2. Areas available to and customarily used by the general public in businesses and nonprofit entities patronized by the public, including but not limited to, professional offices, banks, laundr mats, hotels, and motels.
3. Bingo facilities.
4. Convention facilities.
5. Educational facilities, both public and private.
6. Elevators.
7. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
8. Health care facilities.
9. Hotel and motel lobbies.
10. Licensed child care and adult day care facilities.
11. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other municipal-unit residential facilities.
12. Private clubs when being used for a function to which the general public is invited.
13. Public transportation facilities, including buses, taxicabs, under the authority of the city of Prichard and ticket, boarding, and waiting areas of public transit depots.
14. Restaurants.
15. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
16. Retail stores.
17. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee, or council of the City of Prichard or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City of Prichard.
18. Service lines.
19. Shopping malls.

20. Sports arenas, including enclosed places in outdoor arenas.

Section 5. Prohibition of Smoking in Places of Employment. Smoking shall be prohibited in all enclosed facilities within places of employment without exception. This includes common work areas, auditoriums, classrooms, conferences and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles and all other enclosed areas. This prohibition on smoking shall be communicated to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment.

Section 6. Prohibition of Smoking in Outdoor Arenas and Stadiums. Smoking shall be prohibited in the seating areas of all outdoor sports arenas, stadiums, and amphitheaters at sporting and other public events.

Section 7. Reasonable Distance. Smoking shall be prohibited within a reasonable distance of 15 linear feet outside all main entrances/exits to enclosed areas where smoking is prohibited in this Article, so as to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems or other means.

Section 8. Where Smoking Not Prohibited. Notwithstanding any other provisions of this Ordinance to the contrary, the following areas shall be exempt from the prohibitions in this Article:

1. Private residences which are not also a place of employment or business such as licensed child care, adult day care, or health care facility.
2. Bars.
3. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty percent (20%) of rooms rented to guests in a hotel or motel may be so designated. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under the provisions of this Article. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.
4. Retail tobacco stores: provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Article.
5. Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Article.
6. Private clubs that have no employees, except when being used for a function to which the general public is invited.
7. Outdoor areas of places of employment except those covered by the provisions of Sections 6 and 7 of this Ordinance.

Section 9. Declaration of Establishment as Nonsmoking. Notwithstanding any

other provision of this Ordinance, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 10(1) is posted.

Section 10. Posting of Signs

1. “No Smoking” signs or the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every public place and place of employment where smoking prohibited by this Ordinance, by the owner, operator, manager, or other person in control of that place.
2. Every public place and place of employment where smoking is prohibited by this Ordinance shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
3. All ashtrays shall be removed from any area where smoking is prohibited by this Ordinance by the owner, operator, manager, or other person having control of the area.

Section 11. Nonretaliation: Nonwaiver of Rights

1. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this Ordinance or reports or attempts to prosecute a violation of this Ordinance.
2. An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

Section 12. Enforcement

1. This Article shall be enforced by the City Clerk/**Administrator** or an authorized designee.
2. Notice of the provisions of this Ordinance shall be given to all applicants for a business license in the City of Prichard.
3. Any citizen who desires to register a complaint under this Ordinance may initiate enforcement with the City Clerk/**Administrator**.
4. The Mobile County Board of Health, Prichard Police Department, Prichard Fire Department, or those designated by the Mayor shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Ordinance.

5. An owner, manager, operator, or employee of an establishment regulated by this Ordinance shall inform persons violating this Article of the appropriate provisions thereof.
6. Notwithstanding any other provision of this Ordinance, an employee or private citizen may bring legal action to enforce this Ordinance.
7. In addition to the remedies provided by the provisions of this Section, the City Clerk/Administrator or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Ordinance may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

Section 13. Violation and Penalties.

(a) A person who smokes in an area where smoking is prohibited by the provisions of this Ordinance shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50).

(b) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Ordinance shall be guilty of an infraction, punishable by:

1. A fine not to exceeding one hundred dollars (\$100) for a first violation.
2. A fine not exceeding two hundred (\$200) for a second violation within one (1) year.
3. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.

(c) In addition to the fines established by this Section, violation of this Article by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

(d) Violation of this Article is hereby declared to be a public nuisance, which may be abated by the City Council by restraining order, preliminary and permanent injunction, or other means provided for by law, and the City may take action to recover the costs of the nuisance abatement.

(e) Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

Section 14. Public Education. The City Clerk/Administrator shall engage in a continuing program to explain and clarify the purpose and requirements of this Ordinance to citizens affected by it, and to guide owners, operators, and managers in their

compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

Section 15. Governmental Agency Cooperation. The City Clerk shall annually request other governmental and educational agencies having facilities within the City to establish local operating procedures in cooperation and compliance with this Article. This included urging all Federal, State, County, and School District agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

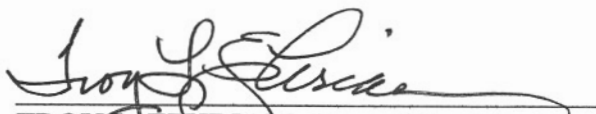
Section 16. Other Applicable Laws. This Ordinance shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Section 17. Liberal Construction. This Ordinance shall be liberally construed so as to further its purposes.

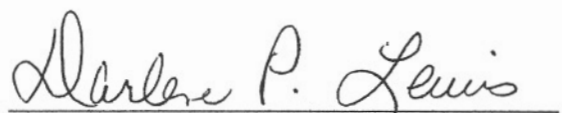
Section 18. Severability. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect, the other provisions of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

Section 19. Effective Date. This Article shall be effective ninety (90) days from and after the date of its adoption and its publication as required by law.

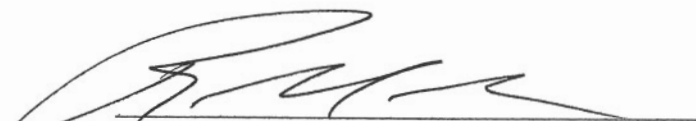
ADOPTED this the 30th day of November, 2007⁶.


TROY L. EPHRIAM, Council President

ATTEST:


DARLENE PALMER-LEWIS, City Clerk

Approved this the 30th day of November, 2007⁶.


RONALD K. DAVIS, Mayor